

ENTERED

March 18, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

BENINO DELAGARZA,

Petitioner,

v.

BOBBY LUMPKIN,

Respondent.

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CIVIL ACTION NO. 6:23-CV-00055

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

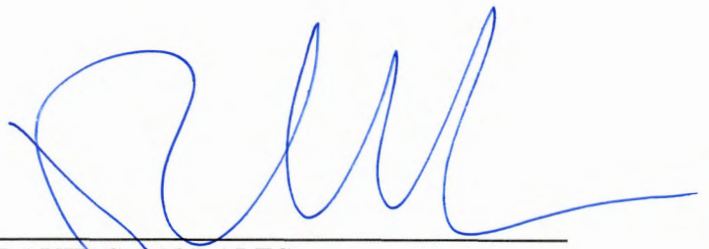
Before the Court is Magistrate Judge Jason B. Libby's Memorandum and Recommendation ("M&R"). (D.E. 27). The M&R recommends that the Court grant Respondent's motion for summary judgment, dismiss Petitioner's claim for habeas corpus relief, and deny a certificate of appealability. *Id.* at 2.

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. Two weeks after the M&R was mailed to Petitioner, the Court received Petitioner's Response to Respondent. (D.E. 28). Petitioner did not date this Response, so the Court cannot determine whether it was timely. *See id.* Even assuming the Response was timely, it does not object to the M&R. Instead, Petitioner "disagree[s] with [Respondent] on all arguments and ask[s] the court to refer to Petitioners memorandum and all Exhibits when considering decision." *Id.* at 1. Petitioner then reasserts the grounds for habeas relief raised in his Petition and Memorandum in Support. *Compare* (D.E. 28) *with* (D.E. 1; D.E. 11). Thus, the Response does not properly raise any objections to the M&R. *See Pelko v. Perales*, No. 2:23-CV-00339, 2024 WL 1972896, at *1–2 (S.D. Tex. May 3, 2024) (Ramos, J.) (first citing FED. R. CIV. P. 72(b)(2); then

citing *Malacara v. Garber*, 353 F.3d 393, 405 (5th Cir. 2003); and then citing *Edmond v. Collins*, 8 F.3d 290, 293 n.7 (5th Cir. 1993)) (“An objection must point out with particularity the alleged error in the Magistrate Judge’s analysis. Otherwise, it does not constitute a proper objection and will not be considered.”). When no timely objection has been filed, the district court need only determine whether the Magistrate Judge’s M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, L.P.*, No. 4:14-CV-02700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015) (Harmon, J.) (citation omitted).

Having reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 27). Accordingly, the Court **GRANTS** Respondent’s Motion for Summary Judgment, (D.E. 26), **DISMISSES** Petitioner’s claim for habeas corpus relief, (D.E. 1), and **DENIES** a certificate of appealability. The Court will enter final judgment separately.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Signed: Corpus Christi, Texas
March 18th, 2025